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DATE MAILED:

AP	APPLICATION NO. FILING DATE		FIRST NAMED INVENTOR		AT	ATTORNEY DOCKET NO.	
	09/118,38	8 07/17/98	TRACEY		K	1101	
	JEFFREY B OSTER		HM42/1117 7		EXAMINER GERSTL, R		
		GHT TREMAINE URY SQUARE			ART UNIT	PAPER NUMBER	
	1501 FOUR SEATTLE W	TH AVENUE A 98101			1613	-	

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

11/17/98





Office Action Summary

Application No. 09/118,388

Applicant(s)

Examiner

Robert Gerstl

Group Art Unit 1613

Tracey

□ Responsive to communication(s) filed on Jul 17, 1998						
This action is FINAL .						
ince this application is in condition for allowance except for formal matters, prosecution as to the merits is closed accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.						
A shortened statutory period for response to this action is se is longer, from the mailing date of this communication. Failu application to become abandoned. (35 U.S.C. § 133). Exter 37 CFR 1.136(a).	re to respond within the period for response will cause the					
Disposition of Claims						
	is/are pending in the application.					
Of the above, claim(s)	is/are withdrawn from consideration.					
Claim(s)						
Claim(s)						
☐ Claim(s)						
	are subject to restriction or election requirement.					
	<u> </u>					
Application Papers See the attached Notice of Draftsperson's Patent Draw	ving Review PTO-948					
☐ The drawing(s) filed on is/are obj	•					
☐ The proposed drawing correction, filed on						
☐ The specification is objected to by the Examiner.						
☐ The oath or declaration is objected to by the Examiner.						
Priority under 35 U.S.C. § 119 Acknowledgement is made of a claim for foreign priori	ity under 35 U.S.C. § 119(a)-(d).					
☐ All ☐ Some* ☐ None of the CERTIFIED copies						
☐ received.						
received in Application No. (Series Code/Serial N	Number)					
$\hfill\Box$ received in this national stage application from t	he International Bureau (PCT Rule 17.2(a)).					
*Certified copies not received:						
Acknowledgement is made of a claim for domestic price	ority under 35 U.S.C. § 119(e).					
Attachment(s)						
☐ Notice of References Cited, PTO-892						
☐ Information Disclosure Statement(s), PTO-1449, Paper	No(s)					
☐ Interview Summary, PTO-413	0.40					
 Notice of Draftsperson's Patent Drawing Review, PTO □ Notice of Informal Patent Application, PTO-152 	-340					
☐ Notice of informal Fatent Application, 1 10-132						
SEE OFFICE ACTION O	N THE FOLLOWING PAGES					

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DETAILED ACTION

Election/Restriction

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21, drawn to pyridines, classified in class 546, subclass 340.
 - II. Claims 22-25, drawn to a method, classified in class 514, subclass 365.
 - III. Claims 26 and 27, drawn to testing assay, classified in class 435, subclass 4.
- 2. The inventions are distinct, each from the other because of the following reasons: Inventions I, II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions because different compounds are employed for different uses.
- 3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
- 4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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5. Claims 22-25 are generic to a plurality of disclosed patentably distinct species comprising any structure. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. A telephone call was made to Mr. Oster on November 13, 1998 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

- Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).
- 8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Gerstl whose telephone number is (703) 308-4531.

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November 13, 1998